

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11407 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE R.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

1 & 2: Yes 3 to 5: No

DIVISIONAL CONTROLLER

Versus

C J RANA

Appearance:

MR KN RAVAL for Petitioner

MR SP HASURKAR for Respondent No. 1

CORAM : MR.JUSTICE R.A.MEHTA

Date of decision: 03/03/98

ORAL JUDGEMENT

1. The respondent-workman is a driver of a ST bus. On 5th September 1981, his bus met with an accident which resulted into death of a minor child of 11 years. In the departmental inquiry, he was dismissed by an order dated 6th March 1982. His First Appeal came to be dismissed. His appeal before the second appellate authority came to be decided on 20th January 1984 and punishment of

dismissal was set aside and he was reinstated in service on his original pay scale and with continuity of service and without backwages. After four years, he raised industrial dispute and reference came to be made on 10th March 1988.

2. The Labour Court allowed the reference and set aside the punishment and set aside the findings of the disciplinary authority. The Labour Court came to the conclusion that the disciplinary authority has erred in giving the finding of negligence.

3. The workman has been acquitted in a criminal case by the judgment dated 6th March 1992. It is also not in dispute that in the MACP, the Corporation had to pay the compensation of Rs. 11,792/-.

4. The Labour Court has relied upon the judgment in the criminal case wherein the finding is that on the evidence of the father of the girl and another eye witness, it cannot be said that the driver was negligent. The Labour Court, therefore, came to the conclusion that when a criminal court has not relied on the evidence of the two eye witnesses, the employer could not have come to the conclusion of negligence of the driver.

5. Reliance is placed on the judgment in the case of Gujarat State Road Transport Corporation Vs. Rupsinh Rathod, 1985 GLH (NOC) 9. In that case, there was a clear acquittal on merits appreciating the evidence and examination of eye witnesses; and in the departmental inquiry, without the evidence of negligence, the authority had come to the conclusion of negligence which was held to be without any evidence and the order of dismissal was set aside.

6. In the present case, the facts are eloquent. The minor girl of 11 years was hit by the front portion of the bus. It is a case of *res ipsa loquitur*. In respect of a minor child, there a duty cast on a driver of extra care and it is for the driver to show that he had taken all the care and that he was not negligent. The conclusion of the Motor Accident Claims Tribunal is also a relevant and material circumstance about the negligence of the driver.

7. In the aforesaid circumstances, the Labour Court could not have come to the conclusion that the departmental inquiry and the findings about negligence of the driver were in any way required to be interfered with by the Labour Court. Hence, the judgment and award of

the Labour Court is required to be quashed and set aside.

8. In the result, the petition is allowed and the impugned judgment and award of the Labour Court is quashed and set aside.

mhs/-